

### **REMARKS/ARGUMENTS**

By the present Amendment, claims 1-6, 10, 11, 18, 19, and 34 are pending in this application. Claims 6, 10, 12-15 and 17 are canceled herein without prejudice. Claims 7-9, 16, 20-33 and 35-67 were previously withdrawn. Applicants reserve the right to file one or more continuation, continuation-in-part, or divisional applications towards any canceled or withdrawn subject matter. Claims 1, 18 and 19 are amended herein. Basis for these amendments may be found throughout the specification and claims as originally filed. No new matter has been added.

A petition for revival of an unintentionally abandoned application under 37 C.F.R. §1.137(b) accompanies this response.

#### ***Claim Objections***

Claims 12-14 are objected to under 37 C.F.R. §1.75(c) as allegedly being of improper dependent form for failing to further limit the subject matter of a previous claim. As amended herein, claims 12-14 have been canceled, which renders this objection moot.

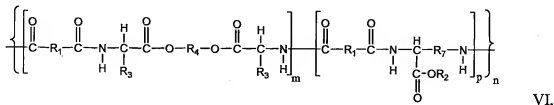
Claim 1 is objected to for reciting that the structure depicted is "formula IV" instead of "formula VI." In addition, the definition of R<sub>3</sub> as "(C<sub>1</sub>-C<sub>6</sub>)alkyl" as well as "(C<sub>2</sub>-C<sub>6</sub>)alkyl," is allegedly redundant. As amended herein, claim 1 refers to the structure of "formula VI;" and R<sub>3</sub> as, among others, "(C<sub>1</sub>-C<sub>6</sub>)alkyl," without any redundancies. Applicants respectfully request reconsideration and removal of these objections.

#### ***Claim Rejections - 35 U.S.C. §103***

Claims 1-6, 10, 11, 15, 17-19, and 34 are rejected under 35 U.S.C. §103 as allegedly being unpatentable over Chu (WO 2002/18477) in view of Lang (U.S. Patent No. 6,830,747). Applicants respectfully disagree.

As amended herein, the invention as defined by the claims distinguishes over Chu and Lang by claiming a bioactive implantable stent having a stent structure with a surface coating of a

biodegradable, bioactive polymer having a chemical structure described by general structural formula VI:

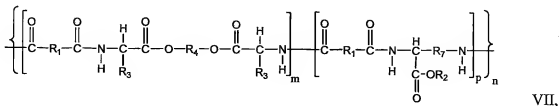


wherein m, p, n, R<sub>1</sub>, R<sub>2</sub>, R<sub>3</sub>, and R<sub>4</sub> are as described; and wherein the polymer further comprises at least one bioactive agent that produces a therapeutic effect in situ, and which is covalently bound to the polymer via a linker, wherein the at least one bioactive agent is an aminoxyl, and wherein the linker is a polypeptide comprising 2 up to about 25 amino acids.

As discussed in the specification at page 22, paragraph [0067], the bioactive agent may be indirectly attached to the polymer via a linker. Surprisingly, this results in improved surface hydrophobicity of the biodegradable, bioactive polymer, as well as improving accessibility of the biodegradable, bioactive polymer towards enzyme activation, thus improving the release profile of the bioactive agent from the biodegradable, bioactive polymer.

Chu (WO 2002/18477)

Chu does not teach or suggest any such stents. Instead, this publication teaches elastomeric copolyester amides and urethanes, which are based on α-amino acids and includes the polymer of formula VII:



wherein m, p, n, R<sub>1</sub>, R<sub>2</sub>, R<sub>3</sub>, and R<sub>4</sub> are as described. This reference, however, does not teach or suggest any polymers having an aminoxyl bioactive agent covalently bound to a polymer via a linker, wherein the linker is a polypeptide comprising 2 up to about 25 amino acids as required by

the instant claims, and which provides improved surface hydrophobicity of the polymer, as well as providing improved accessibility of the polymer towards enzyme activation, thus improving the release profile of the aminoxyl bioactive agent. Absent a teaching or suggestion in the cited publication, one of skill in the art would not have been motivated or had any reason to modify the teachings of Chu in order to arrive at the claimed invention.

Lang (U.S. Patent No. 6,830,747)

Lang does not cure the defects of Chu because this patent does not teach or suggest the claimed invention. Instead, the '747 patent teaches biocompatible, biodegradable polymers and copolymers that are capped at one end and have a free hydroxyl group at the other end, which can be linked to a carboxyl group and further reacted to thereby attach via an amide, ester or oxycarbonyl linkage, an aminoxyl radical as the biologically active agent. This reference, however, does not teach or suggest any polymers having an aminoxyl bioactive agent covalently bound to a polymer via a linker, wherein the linker is a polypeptide comprising 2 up to about 25 amino acids as required by the instant claims, and which provides improved surface hydrophobicity of the polymer, as well as providing improved accessibility of the polymer towards enzyme activation, thus improving the release profile of the aminoxyl bioactive agent. Absent a teaching or suggestion in the cited references, one of skill in the art would not have been motivated or had any reason to modify the teachings of Chu or Lang in order to arrive at the claimed invention.

Nor would one of skill in the art at the time of invention have any reasonable expectation of successfully arriving at the claimed invention either based on what Chu or Lang teaches or suggests, or based on their own general knowledge. As discussed above, Chu teaches elastomeric copolyester amides and urethanes, which are based on  $\alpha$ -amino acids and includes the polymer of formula VII; and Lang teaches biocompatible, biodegradable polymers and copolymers that are capped at one end and have a free hydroxyl group at the other end, which can be linked to a carboxyl group and further reacted to thereby attach via an amide, ester or oxycarbonyl linkage, an aminoxyl radical as the biologically active agent. Neither of these references teach or suggest

any bioactive implantable stents having a stent structure with a surface coating of a biodegradable, bioactive polymer having a chemical structure described by general structural formula VI, wherein the polymer further comprises at least one bioactive agent that produces a therapeutic effect in situ, and which is covalently bound to the polymer via a linker, wherein the at least one bioactive agent is an aminoxyl, and wherein the linker is a polypeptide comprising 2 up to about 25 amino acids as required by the instant claims.

For all these reasons, Applicants respectfully submit that the instant claims are not obvious over the cited references. Reconsideration and withdrawal of this rejection is respectfully requested.

**CONCLUSION**

In view of the above amendments and remarks, reconsideration and favorable action on all claims are respectfully requested. In the event any matters remain to be resolved, the Examiner is requested to contact the undersigned at the telephone number given below so that a prompt disposition of this application can be achieved.

A petition for revival of an unintentionally abandoned application under 37 C.F.R. §1.137(b) accompanies this response. The Commissioner is hereby authorized to charge the amount of \$1,620.00 as payment for the petition to revive to Deposit Account No. 07-1896, referencing the above-identified Attorney Docket Number. No additional fees are believed to be due with the present communication, however, the Commissioner is hereby authorized to charge any additional fees that may be due in connection with the filing of this paper, or credit any overpayment to Deposit Account No. 07-1896, referencing the above-identified Attorney Docket Number.

Respectfully submitted,

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